

From: [Smith, Peterj](#)
To: [Arling, Michelle](#); [Berwald, Derek](#); [Christensen, Carol](#); [Davis, Kathy](#); [Ellenberger, Jay](#); [Evans, Elizabeth](#); [Evans, Jeff](#); [Garrison, Scott](#); [Guillaran, Yu-Ting](#); [Hofmann, Angela](#); [Huskey, Angela](#); [Keaney, Kevin](#); [Kiely, Timothy](#); [Maguire, Kelly](#); [Pont, Richard](#); [Thundiyil, Karen](#); [Wingate, Diedra](#); [Wyatt, T.J](#)
Subject: SENT TO OMB: RE: EPA RESPONSE: EO 12866 Review: Ag Worker Protection Standard Revisions NPRM - Follow-up to Introductory Briefing for Interagency Reviewers
Date: Wednesday, November 06, 2013 2:41:45 PM

Hi folks, here's the clarification that went to OMB a few moments ago. Thanks!

Peter Smith
(202) 564-0262

From: Smith, Peterj
Sent: Wednesday, November 06, 2013 2:32 PM
To: 'Jones, Danielle'
Cc: Hofmann, Angela; Wingate, Diedra; Davis, Kathy; Ellenberger, Jay; Thundiyil, Karen; Garrison, Scott
Subject: RE: EPA RESPONSE: EO 12866 Review: Ag Worker Protection Standard Revisions NPRM - Follow-up to Introductory Briefing for Interagency Reviewers

Hi Danielle,

We regret that this wasn't clearer at the outset. The column headers refer to inspection types that are described in detail in EPA's Worker Protection Standard Agricultural Inspection Guidance, issued in February 2012 and available at <http://www.epa.gov/compliance/resources/policies/monitoring/fifra/wpsinspectionsguide.pdf>. In brief, "Tier I" and "Tier II" inspections are both WPS compliance monitoring inspections. The only substantive difference between Tier I and Tier II compliance monitoring inspections is when they occur relative to the restricted entry interval (REI) (see p. 28). Tier I inspections occur within 30 days of the REI's expiration, and Tier II inspections occur more than 30 days after REI's expiration. "For-cause" inspections are very detailed investigations that are driven by tips and complaints, and that typically involve interviews within the complainant and 2+ employees. (see p. 8)

I hope this addresses your question. Please let me know if you'd like to talk about it or otherwise receive additional information. Thanks!!

Peter Smith
Regulatory Coordination Staff (MC 7101M)
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC 20460

(202) 564-0262 - phone
(202) 564-0263 - fax

From: Jones, Danielle [mailto:Danielle_Y_Jones@omb.eop.gov]

Sent: Tuesday, November 05, 2013 9:43 AM

To: Smith, Peterj

Cc: Hofmann, Angela; Wingate, Diedra; Davis, Kathy; Ellenberger, Jay; Thundiyil, Karen; Garrison, Scott

Subject: RE: EPA RESPONSE: EO 12866 Review: Ag Worker Protection Standard Revisions NPRM - Follow-up to Introductory Briefing for Interagency Reviewers

Good morning Peter,

Thank you for sending EPA's response to my questions regarding the WPS enforcement. Is there an explanation available for the column headers in the Accomplishment report? I am not certain what the first 4 columns represent (Use TIER I, Use TIER II, For cause Tier I, For cause Tier II). If you could direct me to the specific document and page number, that would be much appreciated.

Best,

Danielle

From: Smith, Peterj [<mailto:Smith.Peterj@epa.gov>]

Sent: Monday, November 04, 2013 4:01 PM

To: Jones, Danielle

Cc: Hofmann, Angela; Wingate, Diedra; Davis, Kathy; Ellenberger, Jay; Thundiyil, Karen; Garrison, Scott

Subject: EPA RESPONSE: EO 12866 Review: Ag Worker Protection Standard Revisions NPRM - Follow-up to Introductory Briefing for Interagency Reviewers

Hi Danielle,

During the intro briefing, you raised a couple of questions related to WPS enforcement that we committed to follow-up on. I'm pleased to provide the follow-up in this message.

Q: Do states annually report to EPA the WPS enforcement actions they have taken?

EPA has FIFRA cooperative enforcement agreements with all 50 states, the territories, and several tribes. The conditions of the cooperative agreements require states, territories, and tribes to report annually specific information on WPS agriculture use inspections and enforcement actions that are conducted under the agreements. EPA has annual reports from 2005-2012 on how many WPS inspections were conducted by each state and the number and type of enforcement actions that resulted from those inspections. This information is available at <http://www.epa.gov/compliance/monitoring/programs/fifra/wps.html>.

Q: What enforcement authorities (including levels of violations and penalty amounts) can each state use against WPS violations?

Compliance with the WPS is required by individual pesticide labels, and thus WPS violations are "use violations" within the scope of Section 26 of FIFRA (7 U.S.C. 136w-1). Section 26 provides that states shall have enforcement primacy for pesticide use violations once EPA has determined that the state has adopted adequate pesticide laws, and is enforcing them. As a part of that determination, EPA verifies whether a state has enforcement authorities that meet or exceed EPA's FIFRA Enforcement Response Policy (<http://www.epa.gov/compliance/resources/policies/civil/fifra/fifra-erp1209.pdf>). States may also adopt additional levels, types, and/or amounts of penalties, as well as additional enforcement

authorities. EPA does not have records of each state's penalty or enforcement authority.

FIFRA authorizes both civil and criminal sanctions. The maximum penalties under FIFRA vary according to whether or not the person who commits a violation is an applicant, registrant, producer, commercial applicator, or a private applicator. Section 14 of FIFRA (7 U.S.C. 136l) describes the penalties, which include maximum fines from \$500 to \$50,000 and maximum possible jail time from 30 days to three years, depending on the offender and the offense. These amounts are adjusted for inflation. Most of the time, however, state enforcement actions proceed under state laws and regulations. The levels of violations and penalty amounts can vary from state to state.

Q: Are there any instances where EPA has exercised FIFRA enforcement authority in regard to WPS violations because a state did not enforce adequately the WPS?

There are several instances where EPA can take enforcement action under FIFRA despite state primacy. First, the state lead agency for pesticide enforcement may refer a case to EPA and EPA may take enforcement action under FIFRA. In several instances, states have referred cases to EPA for enforcement. Information on these cases is available at <http://www.epa.gov/agriculture/wpsenf.html>.

Second, under Section 27(a) of FIFRA (7 U.S.C. 136w-2) EPA may review a state enforcement action and decide more needs to be done in that case, and, if the state does not act, EPA may act. EPA has not exercised FIFRA enforcement authority for a WPS violation because a state did not adequately enforce the WPS.

Third, under Section 27(b) of FIFRA (7 U.S.C. 136w-2) EPA can review a state's enforcement program and decide it is inadequate and withdraw approval of state primacy. EPA has not withdrawn any state's primacy under this provision.

As discussed in question 2, if a state has not adopted the necessary pesticide laws as required under Section 26 of FIFRA, EPA exercises FIFRA enforcement authority. EPA's only primary enforcement of WPS occurred in Colorado until 2006. Until that time, Colorado had not adopted the necessary enforcement authorities to be delegated primacy under Section 26 of FIFRA.

Please let me know if you need any additional information.

Many thanks,

Peter Smith
Regulatory Coordination Staff (MC 7101M)
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
Washington, DC 20460

(202) 564-0262 - phone

(202) 564-0263 - fax